***THE HON'BLE SRI JUSTICE C.V.RAMULU**

+W.P.No.12275 OF 2006

% 27-07-2006

P.Manga .. Petitioner

And

$ The Revenue Divisional Officer,
Peddapuram, East Godavari district & others. .. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : V.V.N.NARAYANA RAO

^ Counsel for Respondents 1 & 2: G.P.FOR CIVIL SUPPLIES

^ Counsel for Respondent No.3 : Mr.M.LAKSHMANA SARMA

?CASES REFERRED :

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.12275 of 2006

Dated: 27th July, 2006

Between:

P.Manga

.. Petitioner

and

The Revenue Divisional Officer,
Peddapuram, East Godavari district & others.

.. Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.12275 of 2006

ORDER:

This writ petition is filed seeking a Mandamus declaring the proceedings issued by the first respondent in Ref.No.C.945/06 dated 29.5.2006 as illegal, arbitrary and contrary to the provisions of A.P. State Public Distribution System Control Order, 2001 and consequently to direct the first respondent to re-issue the authorization of the Fair Price Shop No.25 KE Chinnayapalem village, Kotananduru mandal, East Godavari district in favour of petitioner.

The admitted facts are that when the fair price shop dealership of third respondent against Shop No.25 KE Chinnayapalem village was cancelled, the petitioner was allotted with the same temporarily. The proceedings under Section 6A of the Essential Commodities Act, 1955 (for short 'the Act') were initiated against third respondent, in that he was found guilty. Questioning the same, third respondent filed appeal Crl.A.No.155 of 2002 before the learned District and Sessions Judge, East Godavari district under Section 6(c) of the Act. The learned District Judge by order dated 13.2.2006 allowed the said appeal holding that the orders passed by the Joint Collector were neither legal

nor proper. Thus, the findings of the learned District Judge indicated that the third respondent was not guilty and he did not violate any of the control orders. In view of the allowing of appeal by the learned District Judge, the authorization of the third respondent, which was cancelled earlier, was restored by the impugned proceedings.

The learned counsel for petitioner strenuously contended that acquittal of third respondent under the Act has no bearing on the action initiated by the respondents as to cancellation of authorization of third respondent. The third respondent resigned to his fate and even he did not take any steps by filing appeal or revision available under the law against cancellation of his authorization, therefore, it attained finality. Thus, mere acquittal in the 6A proceedings will not permit the official respondents to restore the dealership of third respondent automatically. The learned counsel further contended that sub-clause (4) of clause 5 of A.P. Scheduled Commodities (Regulation of Distribution by Card System) Order, 2001 (for short 'Control Order, 2001') also does not contemplate restoration of authorization of the third respondent under such circumstances. The sub-clause (4) of clause 5 of the Control Order, 2001 reads as under:

> "The appointing authority may, at any time where at the request of the authorized fair price shop or authorized establishment or *suo motu* after making such enquiry as may be deemed necessary and for reasons to be recorded in writing, add to, amend, vary, suspend or cancel the authorization issued or deemed to be issued to him under this clause.
>
> Notwithstanding anything contained in sub-clauses (3) and (4) above, where a fair price shop dealer has been convicted by a Court of law in respect of contravention of any order made in Section 3 of the Essential Commodities Act, 1955 (Central Act 10 of 1955) relating to any of the Commodities mentioned in

the schedule to this order, the appointing authority, shall, by order in writing, cancel his authorization.

Provided that such conviction is set aside in any appeal or revision, the appointing authority may, on application in Form-I made by the person whose authorization has been cancelled, reissue the authorization to such person".

The learned Government Pleader contended that a plain reading of sub-clause (4) of clause 5 of the Control order, 2001 itself indicates that whenever a conviction is set aside in any appeal or revision, the appointing authority may, on application in Form-I made by the person whose authorization has been cancelled, reissue the authorization to such person. I am in full agreement with the submission made by the learned Government Pleader in this regard. The very sub-clause (4) of clause 5 reveals that where a fair price shop dealer has been convicted by a Court of law in respect of contravention of any order made in Section 3 of the Act relating to any of the Commodities mentioned in the schedule to the order, the appointing authority, shall, by order in writing, cancel his authorization. In this case, exactly the same thing was happened. When the third respondent was found to have committed certain irregularities, the provisions of the Act were invoked and the third respondent was convicted under Section 6A of the Act. Questioning the same, the third respondent filed Crl.A.No.155 of 2002 before the learned District and Sessions Judge, East Godavari district, which was allowed by order dated 13.2.2006. The said order reads as under:

"At the outset, it may be noted that on verification of ground balance with book balance, there was no variation in kerosene oil stock in the appellant's fair price shop. The variation in PDS rice is also 2 ½ kgs. Which is within the permissible limits.

> The appellant's son was transporting ten quintals of mid-day meal rice in their own tractor bearing No.AND 6145 at 5.00 a.m. on 23.8.2001. The grounds on which the Joint Collector came to adverse conclusion against the appellant are that the school will be opened at 9.00 a.m. and that the Headmaster of K.E.Chinnaiahpalem was on leave on that day and the appellant was not asked to supply mid-day meal rice on that day. It is not as if either the Headmaster or B.Ed. Assistant informed the dealer about the Headmaster being on leave on that day. It is not as if the dealer is expected to keep mid-day meal rice with him until and unless the Headmaster asks for their supply. There is no prohibition for sending mid-day meal rice to the school as and when the stock is received by the dealer. Even though it was early hours of the day, the rice was not handed over to any third party and was not sent in any public carrier. Rice was sent in the appellant's own vehicle with the supervision of the appellant's son. Custody of the rice remained with the appellant only when the villagers stopped the tractor and detained the same in a flourmill. It is evident that due to village politics, the villagers have unnecessarily detained the tractor and saw that case was booked against the appellant. I do not find any violation made by the appellant of any Control Orders in this case. I find that the order passed by the Joint Collector is neither legal nor proper nor just".

The proviso to non-obstante clause of Clause 5(4) of the Control Order would make the position very clear. Whenever the conviction under Section 6-A of the Act is set aside in appeal/revision, the appointing authority may restore or reissue the authorization to such person. The words appearing in the said proviso i.e. 'such conviction is set aside in any appeal or revision' would denote the conviction recorded under Section 6-A of the Act and not otherwise.

Therefore, it must be deemed that the proviso to non-obstante clause deals only with regard to conviction recorded against a person dealt with under Section 6-A of the Act, but not a person whose authorization was cancelled under the Control Orders. In the cancellation of authorization of a fair price shop dealership, there is no conviction involved – just the authorization of the person is cancelled. Therefore, the words 'such conviction is set aside in any appeal or revision' only refer to conviction under Section 6-A of the Act or any other law for the time being in force. In the event of such proceedings being set aside, a person whose authorization was cancelled earlier, is entitled for consideration of re-issuance or restoration of authorization. Whether the 3rd respondent has filed any appeal against the order of cancellation of authorization or not, has no relevance to be considered in this case. Even in a case where the cancellation of authorization of a person has been confirmed by the appellate authority or revisional authorization under the Control Orders, sub-clause (4) of Clause 5 of the Control Orders is applicable; it is only consideration of restoration of authorization or reissue of authorization, on such conviction under Section 6-A of the Act being set aside. In the instant case, in view of the setting aside of the conviction of the 3rd respondent under Section 6-C of the Act, on an application filed by him for restoration of authorization against Fair Price Shop No.25 of K.E.Chinnayapalem village, Kotananduru Mandal, his authorization was restored through the impugned order. Therefore, the action of the official respondents cannot be said to be either arbitrary or illegal.

In view of the above, the Writ Petition is devoid of merits and is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No order as to costs.

27.7.2006

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